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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,738	03/10/2004	Andrew Schwartz	04-13259	6420

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CISLO & THOMAS, LLP  
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SUITE 900  
SANTA MONICA, CA 90401-1211

EXAMINER
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HYLINSKI, ALYSSA MARIE

ART UNIT	PAPER NUMBER
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3711

MAIL DATE	DELIVERY MODE
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12/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/798,738

Applicant(s)

SCHWARTZ, ANDREW

Examiner

Alyssa M. Hylinski

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 38-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/20/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/20/07 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 38, 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sjogren (1584668) and Jacobson (4953873). Sjogren discloses a method of playing a game by beginning the game with a player's game piece (18) operatively on a starting non-absorbent point formed by the starting goal line (Fig. 1) located in a row with at least two non-absorbent points (Fig. 1) and bounded on one end by a first absorbent point formed by the main goal line and on the other end by a second absorbent point formed by the last line of retreat (Fig. 1, page 2 lines 23-26). The player then observes an event such as the spinning of a roulette or chance wheel that dictates to which point the game piece must be moved, such that a first outcome of the observed event causes the dictated point to be on one side of the point on which the

game piece is currently located and a second outcome of the observed event causes the dictated point to be on the other side of the point on which the piece is located (page 1 lines 71-100). The player then determines whether the dictated point is a non-absorbent point, the first absorbent point, or a second absorbent point and moves the game piece to that point and continues in this fashion until the point is an absorbent point (pages 1-2). The game includes two starting non-absorbent points from which a player may start (Fig. 1). Sjogren discloses the basic inventive concept, substantially as claimed, with the exception of receiving at least one wager that the game piece will be moved to a first absorbent point before being moved to a second absorbent point and awarding the player based on the wager if the dictated point is the first point and denying the player the wager if it is the second point. Johnson discloses a method of playing a game in which a player views an entertainment or sporting event of chance and then wagers on a play or move they think will occur (column 1 lines 5-14 and column 2 lines 15-47) and a player choosing the correct play is awarded their wager while an incorrect player loses the wager (column 1 lines 32-36). Although the reference does not expressly disclose the moves or plays being based off of movement of a game piece on a game board it does teach the idea of wagering on a viewed entertainment event or game. It would have been obvious to one of ordinary skill in the art to wager on a game piece being moved to certain absorbent locations on a board in order to increase a player's interest in the game thereby making it more entertaining and exciting.

4. Claim 43, 46-47, 49-51 and 53-59 rejected under 35 U.S.C. 103(a) as being unpatentable over Seay (2831690) and Jacobson. Seay discloses a method of playing a game by beginning the game with a player's game piece (29) on a starting non-absorbent point (17) on a multi-dimensional game board having a plurality of non-absorbent points (26) surrounded by a plurality of absorbent points (24,25, column 2 line 22-26). The player then observes an event such as the spinning of a roulette or chance wheel that dictates to which adjacent point the game piece must be moved, such that a first outcome of the observed event causes the dictated point to be on one side of the point on which the game piece is currently located and a second outcome of the observed event causes the dictated point to be on the opposite side of the point on which the piece is located (Fig. 1, column 2 lines 3-28). The player then determines whether the dictated point is a non-absorbent point, a first absorbent point, or a second absorbent point and moves the game piece to that point and continues in this fashion until the point is an absorbent point (column 1 line 67 – column 2 line 47). The non-absorbent points are oriented in a north, south, east and west orientation to one another with the absorbent points being interspersed among the non-absorbent points at predetermined locations in addition to a plurality of absorbent points that surround the non-absorbent points (Fig. 1). The game includes a plurality of starting non-absorbent points from which a player may start (16-19). Seay discloses the basic inventive concept, substantially as claimed, with the exception of receiving at least one wager that the game piece will be moved to a first absorbent point before being moved to a second absorbent point and awarding the player based on the wager if the dictated point is the

first point and denying the player the wager if it is the second point. Johnson discloses a method of playing a game with a game board having a plurality of betting areas in which a player views an entertainment or sporting event of chance and then wagers on any of a plurality of possible plays or moves they think will occur (column 1 lines 5-14 and column 2 lines 15-47). A player choosing the correct play is awarded their wager while an incorrect player loses the wager (column 1 lines 32-36). Although the reference does not expressly disclose the moves or plays being based off of movement of a game piece on a game board it does teach the idea of wagering on a viewed entertainment event or game. It would have been obvious to one of ordinary skill in the art to wager on a game piece being moved to one of a plurality of absorbent locations on a board in order to increase a player's interest in the game thereby making it more entertaining and exciting. The combination of references discloses a game in which a player can wager on a game piece being moved to any of a plurality of safe or sink locations on the board. In regard to the board having player stations with betting areas, the examiner notes that such a limitation would have been an obvious matter of design choice since Applicant has not disclosed that player stations with betting areas provide an advantage, are used for a particular purpose, or solve a stated problem. Furthermore, providing the betting areas without playing sections still allow players to wager on the outcome of a chance event.

5. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seay, Jacobson and Piper (5135231). Seay and Jacobson disclose the basic inventive concept as described above, substantially as claimed, with the exception of the

observed event including dice such that half the faces on a first die move the game piece in a first direction and the other half of the faces move the game piece in an opposite direction and a half the faces on a second die move the game piece in third and fourth opposite directions, respectively. Piper discloses a board game having the points of the board oriented in a north, south, east and west orientation and uses two dice having indicia thereon for moving the game pieces in a first direction such as north, a second opposite direction such as south, a third direction such as west and a fourth opposite direction such as east (Figs. 1 & 2). It would have been obvious to one of ordinary skill in the art from the teaching of Piper to use dice as opposed to a spinner wheel since the references show these elements to be art recognized equivalents in the game art and as such it would have been obvious to substitute the spinner for the dice as disclosed by Piper. In regard to the limitation of the first and second directions located on the first die and the third and fourth directions located on the second die, the examiner notes that a mere rearrangement of parts that would not effect the operation of the device would be entirely obvious. *See in re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950)*. Therefore, it would have been an obvious matter of design choice to modify the first die with just the north and south directions and the second die with the east and west directions since changing which die the elements are located on does not alter how the die would operate when rolled.

6. Claim 45 rejected under 35 U.S.C. 103(a) as being unpatentable over Seay, Jacobson, and Piper and further in view of Cambardella (4070026). The method of Seay, Jacobson and Piper discloses the basic inventive concept, substantially as

claimed, with the exception of the first direction being oblique to the third direction and the points being oriented in a northwest, northeast, southwest and southeast orientation. Cambardella discloses a board game utilizing a die for determining the movement of a game piece in oblique directions as compared to the first and second north and south directions (Figs. 2 & 3) and a game board that has points oriented in northwest, northeast, southwest and southeast orientations (Fig. 1). It would have been obvious to one of ordinary skill in the art from the teaching of Cambardella to set up the game board and dice in this way in order to be able to move the game pieces in a multitude of directions about a board based on rolling dice in order to make the game more exciting by having a variety of different paths over which the game piece can be moved.

7. Claims 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sjogren, Jacobson and Perrie (6186505). Claims 48 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seay, Jacobson and Perrie. The references disclose the basic inventive concept, substantially as claimed, with the exception of calculating an inchoate cargo in relation to the player's wager if the dictated point is a non-absorbent point and allowing the starting non-absorbent point to become a first or second absorbent point after the first move of the game. Perrie discloses a method of playing a game by beginning the game on a starting non-absorbent point (column 11 lined 26-28 and column 12 lines 13-14) that is near at least one other non-absorbent point (column 11 Table V) of a multi-dimensional game board (Fig. 1) having a plurality of non-absorbent points surrounded by a plurality of absorbent points (column 11 Table

V and column 12 lines 9-24). A player can place at least one wager that a first absorbent point will be chosen before a second absorbent point (column 8 lines 21-66 and column 9 lines 1-23). The player observes an event such as a computer operated random number generator (column 8 lines 45-48) or the rolling of dice that will dictate to the player which point has been chosen (column 11 lines 25-26). It is then determined whether the point is a non-absorbent point, a first absorbent point, or a second absorbent point with the game continuing if the point is a non-absorbent point (column 10 lines 64-67). The game includes multiple first and second absorbent points that can be selected during play of the game (column 12 lines 9-24) and a player's winnings can be calculated in regard to the player's wager to be a certain amount at the end of the game (column 10 Table IV) thereby forming an inchoate cargo while the point chosen is a non-absorbent point (column 12 lines 9-19). The starting non-absorbent point can become a first or second absorbent point after the first move of the game if other points in the set also become selected (column 10 lines 65-66). It would have been obvious to one of ordinary skill in the art from the teaching of Perrie to set up the game in this way in order to make a wagering game that utilizes a game board more exciting and interesting.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 38-59 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Hylinski whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMH



EUGENE KIM  
SUPERVISORY PATENT EXAMINER